Sec. 7.

(a) If the provisions listed in section 6 of this rule do not apply, a person proposing a new or increased discharge must submit an antidegradation demonstration to the commissioner in accordance with this section before applying for a facility construction permit pursuant to 327 IAC 3, if applicable, or for a new, renewed, or modified control document.

(b) All antidegradation demonstrations shall contain the following elements:
(1) An identification of all pollutants for which an increased loading or concentration is proposed, including the mass and concentration proposed to be discharged and current and projected concentration in the receiving water.
(2) An identification and characterization of the water body(ies) affected by the proposed increase that addresses the physical, biological and chemical conditions of the water body.
(3) An identification of measures available to the existing or proposed discharger to minimize or prevent the proposed lowering of water quality. A separate analysis shall be performed for each pollutant for which there may be [significant] lowering of water quality. Each analysis shall include the following:

(A) Any pollution prevention alternatives (including new and innovative technologies and means to avoid the new discharge) and techniques available to the existing or proposed discharger that would minimize or prevent the proposed [significant] lowering of water quality, the effluent concentrations attainable by the alternatives and techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.

(B) Alternative or enhanced treatment techniques available to the existing or proposed discharger that would minimize or prevent the proposed [significant] lowering of water quality, the effluent concentrations attainable by the alternatives and enhanced treatment techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations. This analysis shall include an evaluation of the feasibility and costs of connecting to an existing publicly or privately owned treatment works.

(4) Documentation showing that the existing or proposed discharger has made a good faith effort to provide notice to all government bodies or privately sponsored conservation projects that have specifically targeted improved water quality or enhanced recreational opportunities on the proposed receiving water body, in the area of the new or increased discharge. The notice shall include a list of the parameters for which a [significant] lowering of water quality is proposed.

(c) the antidegradation demonstration shall also contain an evaluation of the positive and negative social or economic development impacts to the area in which the receiving waters are located that will occur if the [significant] lowering of water quality is allowed. This evaluation shall include the following:

(1) An analysis of the important social, economic or environmental benefits to realized through the project or activity to be accommodated by allowing the proposed lowering of water quality. The estimate may include social and economic benefits to the community, creation or preservation of employment, creation or preservation of tax revenue, correction of environmental or public health problems, industrial commercial or residential growth and any other benefits identified by the applicant

(2) An analysis of the important social, economic, and environmental benefits to be lost if water quality is lowered including any lost or diminished commercial or recreational opportunities from allowing the proposed lowering of water quality, and any other costs.

(d) In lieu of the information required by subsections (b) and (c), dischargers proposing:

(1) response action pursuant to CERCLA;
(2) corrective action pursuant to RCRA; or
(3) action pursuant to similar federal or state authorities, including:
(A) an underground storage tank (UST) corrective action under IC 13-23-13;
(B) a remediation of petroleum releases under IC 13-24-1;
(C) a voluntary remediation under IC 13-25-5; or
(D) abatement or correction of any polluted condition under IC 13-18-7;

may submit information to the commissioner demonstrating that the action minimizes the proposed lowering of water quality and will use the most cost effective pollution prevention and treatment techniques available.

(e) Upon receipt of an antidegradation demonstration by a discharger, the commissioner shall provide notice, request comment, and may, if requested, schedule and hold a public meeting on the application in accordance with section 10 of this rule. The commissioner shall hold a public meeting on the application in accordance with section 10 if the proposed discharge is to an OSRW or a public meeting is requested by 25 persons or more. The commissioner shall quantify the increased risk to human health and aquatic life due to new or increased discharges of BCCs. This information shall be available for inspection and copying as a public record before the public meeting is held.

(f) The commissioner shall determine whether the information provided by the discharger proposing a new or increased discharge is administratively complete.

(1) After determining that the information is administratively complete, the commissioner shall consider the following in making determinations regarding proposed activities that lower water quality:

(a) The magnitude of the proposed lowering of water quality;
(b) The anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including threatened and endangered species, important commercial or recreational sport fish species, other individual species and the overall aquatic community structure and function;
(c) The anticipated impact of the proposed lowering of water quality on human health and the overall quality and value of the water resource;
(d) The degree to which water quality may be lowered in waters located within national, state or local parks, preserves or wildlife areas;
(e) The effects of lower water quality on the economic value of the water body for recreation, tourism and other commercial activities, aesthetics, or other use and enjoyment by humans;
(f) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state;
(g) The cost of the water pollution controls associated with the proposed activity;
(h) The cost effectiveness and technical feasibility of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives;
(i) The availability, cost effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans outlined in state or local water quality management planning documents and applicable facility planning documents;
(j) The availability, reliability and cost effectiveness of any non-degradation alternative, minimal degradation alternative or mitigative technique alternative;
(k) The reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation;
(l) The condition of the local economy, the number and types of new direct and indirect jobs to be created, state and local tax revenue to be generated, and other economic and social factors as the commissioner deems appropriate;
(m) any decision relevant to the antidegradation demonstration made by a local body of government potentially affected by the new or increased loading; and
(n) Any other information regarding the proposed activities and the affected water body that the commissioner deems appropriate

(2) The commissioner shall deny the request to lower water quality if:

(A) cost-effective measures necessary to prevent the proposed lowering are reasonably available; or
(B) the action that would cause the lowering is not necessary to support important social and economic development in the area.

(3) The commissioner shall require the applicant to implement a non-degradation alternative, a minimal degradation alternative, or a mitigative technique alternative to offset all or part of the proposed lowering of water quality, if the commissioner determines that the alternative is technically feasible and economically justifiable.

(4) In no event may a permit be granted that would allow water quality to be lowered below the minimum level required to fully support existing and designated uses or that would otherwise be in conflict with the requirements of Section 3 of this rule.

(g) When the commissioner proposes an antidegradation determination, it shall be summarized in the public notice form and incorporated into the draft permit and the fact sheet that is made available for public comment under 327 IAC 5-3-9. A final antidegradation decision shall be incorporated into the final NPDES permit and fact sheet.

(h) In addition to the provisions in subsections (b) through (g), dischargers proposing to cause a significant lowering of water quality in an OSRW shall either follow the provisions in subdivision (1) or subdivision (2) for each activity undertaken that will result in a significant lowering of water quality in an OSRW or exceptional use water.

(1) Implementation of a water quality project in the watershed of the outstanding state resource water or the exceptional use water that will result in an overall improvement of the water quality of the outstanding state resource water or the exceptional use water.

(2) Payment of a fee, not to exceed five hundred thousand dollars ($500,000) based on the type and quantity of increased pollutant loadings for deposit in the outstanding state resource water improvement fund established under IC 13-18-3-14.

(3)Existing or proposed new dischargers electing to follow the procedures in either subdivisions (1) or (2) must follow the public notice requirements under section 10.

(4) Further, new or increased discharges to an OSRW in Indiana’s Great Lakes Basin Waters must also be consistent with 327 IAC 5-2-11.7